

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))**

Docket Number (Optional)  
TESSOP 3.3-002

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6,873,358 Application Number 09/331,008  
Issue Date March 29, 2005 Filing Date July 8, 1999

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable**

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_, original issue date \_\_\_\_\_ ;  
original application number \_\_\_\_\_ ,  
original filing date \_\_\_\_\_ .

☒ resulted from the entry into the U.S. under 35 U.S.C. 371 of international  
application PCT/JP97/04611 filed on 12/15/1997 .

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: April 29, 2009

Electronic Signature for Lawrence E. Russ: /Lawrence E. Russ/

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input checked="" type="checkbox"/> \$ 980.00	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 980.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ 1,640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED \$ 1,640.00

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ \_\_\_\_\_ .

☒ Please charge Deposit Account No. 12-1095 the sum of \$ 2,620.00 .

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. 12-1095 .

## 7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. 12-1095 .

OR

☐ Send refund check.

### WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional. The Assignee's attorney first became aware that the maintenance fee was not timely paid after being contacted on April 17, 2009 by Examiner Nhan Tran, the Examiner of the reissue application for this patent. The filing of such reissue application, U.S. Application No. 11/728,982, on March 27, 2007 clearly shows that the Assignee did not intend for the patent to expire.

## 9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

<u>/Lawrence E. Russ/</u> Signature(s) of Petitioner(s)	<u>April 29, 2009</u> Date
<u>Lawrence E. Russ</u> Typed or printed name(s)	<u>35,342</u> Registration Number, if applicable
<u>(908) 518-6309</u> Telephone Number	
<u>LERNER, DAVID, LITTENBERG, KRUMHOLZ &amp; MENTLIK, LLP</u> 600 South Avenue West Westfield, New Jersey 07090 Address	

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

### ENCLOSURES:

- ☒ Maintenance Fee payment
- ☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)
- ☒ Change of Correspondence Address, Patent
- ☒ Power of Attorney
- ☒ Statement Under 37 CFR 3.73(b)